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1 A. No, the driver is looking straight ahead.

2 Q. Not at the curb?

3 A. Not at the curb. The driver is looking straight  
4 ahead. But if I draw an imaginary line from the driver's  
5 eye straightforward, straight ahead, let's say it's in the  
6 middle of the car, it really isn't because the driver sits  
7 on the left. Let's say the driver is in the middle of the  
8 street, let's say the street is 60 feet wide so we know  
9 from curb to curb --

10 Q. Okay.

11 A. -- so from the driver's eye, if he is in the  
12 middle, this is 30 feet from the driver's eye to this curb.  
13 Because the other 30 feet is on this side of the driver.

14 Q. Okay.

15 A. All right. So let's say this is 30 feet, let's  
16 say we know that we've placed our piece of street furniture  
17 30 feet off the curb.

18 Q. Okay.

19 A. We know it's really much less than that, but to  
20 make this look good, all right. So now we know we've got  
21 30 feet from the driver's straight ahead view to the curb  
22 and 30 more feet from the edge of the curb to the edge of  
23 the street furniture, so we know that this is 60 feet. All  
24 right. This distance we can measure, we take our tape  
25 measure, we put it at the driver's eye and run it down the

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1 street until we get to this imaginary line that we've maybe  
2 drawn with a piece of chalk across the street. So we know  
3 what this is. Let's say, hypothetically, it's 100 feet.

4 Q. 100 feet straight ahead?

5 A. Right. Now we can do a calculation, because in  
6 trigonometry, we can find, this line is called the  
7 hypotenuse. So in trigonometry, I don't know if you've  
8 learned socatowa (phonetic).

9 Q. If I did, it was a long time ago.

10 A. Socatowa, I think. So socatowa means, socatowa  
11 means the sign, you have the sign and the cosign and the  
12 tangent. So the sign you calculate by the opposite over  
13 the hypotenuse. The cosign you calculate by the adjacent  
14 over the hypotenuse, and the tangent you calculate by the  
15 opposite over the adjacent.

16 MR. HECKER: Can I just say -- I don't mean  
17 to take over your examination -- you can ask him  
18 whatever questions you want about this, but I  
19 think I understood what your question was and I  
20 think all he is saying is that if you know the  
21 distance from the car to where the middle of the  
22 street is near the street furniture and you know  
23 how far it is from that point to the street  
24 furniture, you can then use trigonometry to  
25 calculate the angle. I think that's all he is

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1 saying. I don't know if that's helpful to you,  
2 but continue whatever way you think is  
3 appropriate.

4 A. If you know two things, you can calculate the  
5 third. So if you want to know whether this object is  
6 within the cone of vision, as long as you know two of the  
7 angles, you can calculate for the third angle and you can  
8 calculate for this distance.

9 Q. Okay.

10 A. And that will tell you, yes, it falls within the  
11 cone of vision or, no, it doesn't.

12 Q. Did you during your two days in New York or at  
13 any time after do this sort of a calculation with regard to  
14 what you saw during your site visits?

15 A. No.

16 Q. So I assume that when you were in New York City  
17 you saw examples of street furniture that you concluded  
18 would have been within a driver's cone of vision?

19 A. Yes.

20 Q. Did you come to any conclusions about how on an  
21 average New York City block how long, say, a bus shelter  
22 remains in a driver's cone of vision if the driver is  
23 moving at the speed limit which I believe is 30 miles an  
24 hour?

25 A. You'd also need to include in that the width of

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1 the street as we discussed with this exhibit and which side  
2 of the street, if you have a wider street and the driver is  
3 looking at an object on the left, it may be out of the cone  
4 of vision where an object on the right at the same  
5 location, the same distance might be within the cone of  
6 vision. So the simple answer to your question is, I did  
7 not try to do that.

8 Q. Why does the left or the right matter?

9 A. Because this angle, if we go back to Exhibit D,  
10 the angle expands. The angle is the same, but as you're  
11 looking farther down the road, that same angle covers more  
12 objects. So if I'm looking right here very close to the  
13 car to be within the cone of vision, an object would have  
14 to be almost straight ahead. But it's called, we call it  
15 the focus of expansion, and it's the expansion of the  
16 angle. So the farther away you are from something, that  
17 same 12 degree plus or minus 12 degree cone of vision gets  
18 wider and wider and wider. So if I'm 100 feet away like  
19 here, an object may be able to be 60 feet to the side of me  
20 and still be within the cone of vision.

21 Q. Do drivers tend to look at objects within their  
22 cone of vision that are closer in proximity to them or  
23 further away in proximity to them?

24 A. I'm not aware that there's any general answer to  
25 that.

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1 Q. In analyzing what you call the city-sanction  
2 signs and their potential for driver distraction, did you  
3 look at any accident data?

4 A. No, I did not.

5 Q. Did you study any sort of driver-eye movements?

6 A. I did not.

7 Q. Do you study situation awareness?

8 A. I did not.

9 Q. What is situation awareness?

10 A. It's almost self explanatory. Situation  
11 awareness is a principal that tries to measure how aware an  
12 individual is of his or her surroundings at any given  
13 moment in time. It's almost like saying, it's almost like  
14 asking whether somebody has the big picture or not or  
15 seeing the forest for the trees.

16 Q. Did you study reaction time?

17 A. I did not.

18 Q. And did you study the number of near misses?

19 A. I did not.

20 Q. What did you do to come up with your conclusions?

21 MR. HECKER: Objection.

22 Q. How did you arrive at your conclusion that fuel  
23 signs almost without exception cause you less concern about  
24 the potential for driver distraction than city-sanction  
25 signs?

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1           A.       Well, I came up with that conclusion based upon a  
2       number of things that I did during the two days of site  
3       visits as well as some of the basic science behind some of  
4       which you were just quoting. And I would say the primary  
5       observation I made that led me to that conclusion was that  
6       the city-sanction signs, I can't say always, but certainly  
7       the majority of the time were within the driver's cone of  
8       vision, at least during some of the time and distance that  
9       a driver would approach them. And conversely, the fuel  
10      signs with only one or two exceptions were never within the  
11      driver's cone of vision. And not only were the fuel signs  
12      well outside the driver's cone of vision, meaning instead  
13      of plus or minus 12 degrees, they might have sometimes been  
14      plus or minus 30 or 40 degrees. But in many cases, the  
15      locations of the fuel signs were such that they were  
16      difficult if not impossible to see, even if a driver was  
17      actually looking for them as opposed to being able to see  
18      even when you're not looking for them. And the reason for  
19      that is that many of them were located high up, they were  
20      on pillars or posts at parking lots or gas stations or  
21      something like that. So they were above the driver's  
22      normal horizontal scanning pattern. Many of them were  
23      located inside the entrances to parking garages and a  
24      driver driving along a street approaching and passing the  
25      entrance to the parking garage would only have a fleeting

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1 glimpse of that sign because of its location inside the  
2 garage. And on many of those occasions, the sign was  
3 physically blocked from view by a car or a truck or an SUV  
4 that was parked in the entrance to the parking garage  
5 thereby totally blocking the view of the sign on the wall.  
6 So again, I'm not saying 100 percent, but it was my  
7 experience that the overwhelming majority of the fuel signs  
8 were outside the cone of vision and the overwhelming  
9 majority of what I call city-sanction signs were within the  
10 cone of vision.

11 Q. How many fuel signs did you look at?

12 A. I don't know. There's a count in the report. I  
13 don't recall off hand.

14 Q. So whatever it says in the report is what you  
15 looked at and there were no others?

16 A. Everything I looked at is counted in the report.

17 Q. What did you do to conclude that the majority of  
18 city-sanction signs are within a driver's cone of vision?

19 A. Well, I did not do my trigonometry when I was out  
20 on the road. So I didn't actually measure what was within  
21 12 degrees and what was not. But I've been doing this kind  
22 of work for 30 years and I'm reasonably good at identifying  
23 what is within that cone and what is not. And in addition  
24 to that -- I know it is a requirement in many  
25 jurisdictions. I don't know if it's a requirement in New

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1 important for me to place my head precisely where one  
2 particular driver's head would be.

3 Q. Did you look at the videos after you took them?

4 A. Yes.

5 Q. Do you think that you can see on the video every  
6 sign that you narrated?

7 A. No.

8 Q. Why is that?

9 A. Well, in part, the resolution of the video camera  
10 wasn't necessarily good enough. This wasn't a  
11 professional, quality video camera. Number two, the video  
12 camera often picked up reflections in the windshield and I  
13 might have been able to move my head to get rid of those  
14 reflections; number three, the position of the video  
15 camera, sometimes it got the rear view mirror in its image,  
16 and I knew because I was looking at a site that particular  
17 sign or banner or piece of street furniture came into view  
18 for a fraction of a section and then got hidden by the  
19 mirror. So the video camera just might not have picked it  
20 up.

21 Q. Do you think that you saw more signs than a  
22 driver would have seen because you weren't focused on the  
23 driving task?

24 A. I think I saw more signs than the average driver  
25 would see for that reason and because I was looking for



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1 signs. I was specifically, I had tasked myself to look for  
2 every sign, every sign and every piece of street furniture  
3 that I could. And that's what we call a directed search or  
4 directed visual search. So chances are, I'm going to see  
5 many more than someone who is driving and not directing  
6 their search toward the objects.

7 Q. Do you recall what hours you were out in the  
8 field on the first day?

9 A. All day. (Laughter) We started, I think we met  
10 at 9:00 or 9:30 and we continued until well after dark. I  
11 think we went until 9:00 p.m. or maybe 8:30 p.m.

12 Q. And there's about an hour's worth of video on a  
13 DVD I think you taped?

14 A. That's right.

15 Q. What did you do in the down time?

16 A. Well, it was no down time for us.

17 Q. What were you doing during the time you weren't  
18 videoing?

19 A. In order to save tape, when we were not actually  
20 progressing through an area that I had said, okay, we're  
21 going to drive on Sixth Avenue through Herald Square, we're  
22 going to start on 28th street and continue to 36th Street.  
23 So we -- Mr. Taggart, would be driving along and we'd be on  
24 Sixth Avenue at 19th Street, 20th Street, 21st Street and  
25 when we got to the start of what I had identified as the

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1 items of street furniture along these roads so it doesn't  
2 pay to do them. And I put "lack of," just not knowing  
3 whether there might have been some that he didn't know  
4 about, et cetera.

5 Q. On page 13 in the second paragraph, you state  
6 that "Because of their size, internal illumination and  
7 visual prominence in your intersection, bus shelter signs  
8 are potential distractors."

9 A. Yes.

10 Q. What did you do to arrive at that conclusion?

11 MR. HECKER: Objection.

12 Q. How did you arrive at that conclusion?

13 A. Largely, the same way that I arrived at others, a  
14 combination of my observation and my experience just  
15 putting those things together.

16 Q. Did you try and figure out whether the bus  
17 shelter signs are actually distracting to drivers?

18 A. No, there was no way I could do that. And given  
19 that I was just doing this myself, not a research study in  
20 which I had lots of drivers to study. And as I mentioned a  
21 minute ago, regarding that one video sign, the very same  
22 sign and the very same location might be a distractor under  
23 certain circumstances and not under other circumstances  
24 which is why I tend to use the word potential.

25 Q. So before I go through and ask a whole bunch of

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1 questions, maybe we can cut to the chase with one question.  
2 (Laughter) So would it be fair to say that for all of the  
3 city-sanction signs, your determinations were about whether  
4 they are potentially distracting and not whether they are  
5 actually distracting?

6 A. I made no effort to measure actual distraction.  
7 So all of my, all of my comments and my conclusions would  
8 relate to their being potential distractors.

9 Q. Actually, let me ask you this question. I asked  
10 you about how you came to your conclusion that bus shelter  
11 signs are potential distractors and you gave an answer  
12 about how you came to that conclusion.

13 Is it fair to say that your conclusion that all  
14 of the other types of city-sanction signs are or are not  
15 potential distractors was made in the same way?

16 A. Yes. And I would add one thing to that, I think  
17 in answer to your previous question, I said, my  
18 observations, my experience, I would add to that the  
19 research, published research and largely as a result of the  
20 published research, I would say that some city-sanction  
21 signs have a higher potential to be distractors than  
22 others.

23 Q. Which city-sanction signs do you believe have a  
24 higher potential to be distractors?

25 A. I would say that any city-sanction signs that

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1 display motion, whether it be video or digital signs that  
2 change, or scrolling signs or eye-share signs, all of those  
3 four, and I think those are only four categories, display  
4 motion or what we would call apparent motion. The bigger  
5 they are, the more likely they are to distract or the  
6 higher potential for distraction. And at night, the  
7 brighter they are, the higher the potential for  
8 distraction.

9 Q. Is it true for all signs whether or not they  
10 display motion that the bigger they are, the higher  
11 potential there is for distraction?

12 A. I think it is generally true.

13 Q. And you said that this last part of your  
14 conclusion was based upon research?

15 A. Well, I, my answer to your previous question  
16 about the bus shelter signs being distracting was based  
17 upon, I said, my experience and my observations during this  
18 site visit. I should have added research to that as well  
19 as a third basis for reaching that conclusion.

20 Q. By research, do you mean the items listed in the  
21 bibliography?

22 A. Yes. There's more research than just that, but  
23 these are the, the ones in this list of references are the  
24 ones that I thought were most perhaps directly related to  
25 the issues here.

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1 Q. Do you agree with the conclusions that were  
2 reached in all of the things that you list in appendix one?

3 MR. HECKER: Objection.

4 Q. Let me just ask you this, actually.

5 In reaching this conclusion about these four  
6 categories of signs that you think had more potential for  
7 distraction, the motion, digital scrolling eye-share signs,  
8 did you rely on what's listed as number 16?

9 A. Did I rely on it? I wouldn't say I relied on it.  
10 It probably contributed to, to my overall opinion, but if  
11 you look at reference number eight, that's a report that I  
12 wrote almost 30 years ago long before most of this other  
13 research was published and I had the same conclusions in  
14 that report that I'm presenting to you now and that was  
15 based upon my own research.

16 Q. Would you disagree with and critique what they  
17 said in number 16 --

18 A. Yes. I thought I was citing an earlier one. I  
19 have a very serious problems with what they did in number  
20 16, yes.

21 Q. Your report in number eight is cited by the  
22 authors of number 16, right, if you remember?

23 A. I don't remember. But it would not surprise me.

24 Q. Do you have a pretty good memory of what you said  
25 in your report that's listed as number eight?

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1 A. In number eight, sure, my 30-year old memory is  
2 perfect.

3 Q. I mean, have you looked at it recently?  
4 (Laughter)

5 A. No, I have not.

6 Q. Do you agree that laboratory research techniques  
7 are capable of gathering more precise data than just a  
8 visual inspection?

9 A. Yes.

10 Q. Do you agree that laboratory research techniques  
11 are more capable of yielding reliable data than visual  
12 inspection?

13 MR. HECKER: I'm just going to object. I  
14 don't know what you mean by "laboratory  
15 techniques."

16 Q. Do you know what I mean by "laboratory  
17 techniques?" (Laughter)

18 A. Well, I assumed what you meant by "laboratory  
19 techniques."

20 Q. Have you ever used the word "laboratory  
21 techniques" in any of your reports?

22 A. Most probably.

23 Q. What have you used the word to mean?

24 A. Well, I would use the term probably "laboratory  
25 studies."

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1 Q. Okay.

2 A. And in my field of human factors, it basically  
3 means conducting research in a, not on the road and not in  
4 the field but in the controlled environment of a research  
5 facility.

6 Q. Using a simulator or something else?

7 A. Both. Sometimes using simulator, sometimes using  
8 other techniques, sometimes using both.

9 Q. Such as, other techniques?

10 A. There are lots of techniques. For example, if  
11 I'm interested in observing signs, I can project a video on  
12 the wall and have people respond to that, a video that  
13 perhaps I shot in a real car, I'd bring it into the  
14 laboratory, project it and I have the subject or the  
15 participant sit in front of a little console and press  
16 buttons or operate controls based upon what they see in the  
17 video. There are the techniques we call Tachistopic,  
18 T-A-C-H-I-S-T-O-P-I-C and all that really means is that's a  
19 device that allows you to flash a picture on the wall for a  
20 very, very tiny little period of time, fractions of a  
21 second, but very precise. And you can measure how visible  
22 something is or how, we would call it, conspicuous  
23 something is. And you find that certain signs can be read  
24 and interpreted with a very, very short presentation and  
25 other signs take a much longer presentation and that's how

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1 you know not so much when you're looking at advertising  
2 signs but when you're looking at official highway signs,  
3 you want them to be seen as quickly as you can because you  
4 don't want the driver distracted by the official highway  
5 sign. So we use Tachistopic techniques to flash different  
6 styles, colors, contrasts, et cetera, and see which work  
7 the best.

8 Q. Would it be possible to use those techniques or  
9 any of those techniques that you just described to analyze  
10 the potential for driving distraction from city-sanction  
11 signs in New York City?

12 A. To some extent I would say yes. I wouldn't say  
13 in all cases.

14 Q. Why not?

15 A. Well, for example, one of the issues that I'm  
16 concerned about is the brightness of signs at night. We do  
17 not have any laboratory techniques or capabilities yet to  
18 replicate in an artificial setting the brightness of a  
19 sign, whether that's a simulator or projector, whatever.  
20 So we can never in a laboratory do a valid or reliable  
21 study of how the brightness of the sign might effect or  
22 might distract the driver. That's --

23 Q. Leaving aside that exception.

24 A. I'll give you another example. We talked at the  
25 very beginning about simulators and how sophisticated



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1 they've become. But the visual presentation of even the  
2 best simulators are such that they cannot replicate the  
3 visual acuity of the human eye when it comes to looking at  
4 signs so if you create a laboratory environment with a  
5 driving simulator and put in this environment all of the  
6 vehicles and the road markings and the buildings and the  
7 signs and all of that, and study how a driver might be  
8 responding to signs or being distracted by signs, you find  
9 that the signs that the simulator can reproduce are simply  
10 not as visible from as great a distance as a sign in the  
11 real world. So in a simulator, what we tend to do is  
12 artificially inflate the size of the sign, we make it  
13 physically bigger in proportion to everything else than it  
14 would be in the real world so that the driver can respond  
15 to it in the same distance or the same time as he would in  
16 the real world.

17 So that leads me to conclude that when you're  
18 trying to study distraction from signs or responses to  
19 signs in a simulator, you have problems that don't exist  
20 when you try to do them in the real world.

21 Q. When you say "in the real world," in the real  
22 world how?

23 A. On a road, on a highway, on the street.

24 Q. But on a road, highway, street, just using the  
25 same sort of method that you used in New York City or

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1 something else?

2 A. No, I didn't do a research study in New York  
3 City. I wasn't asked to, and these guys couldn't afford me  
4 if I did. All I did was an observational study. If I was  
5 doing a research study, I could do it in any one of several  
6 ways, one of which might be outfitting a particular vehicle  
7 with instruments to measure the driver's foot on the gas  
8 pedal, the brake pedal, the steering wheel, an eye-movement  
9 camera to study where the driver is looking and so on. And  
10 then I might find by putting ads in the paper or notices on  
11 the bulletin boards, I would try to get 30 or 50 or 100  
12 volunteers to participate and to drive that car through the  
13 streets that I've previously decided I want them to drive  
14 them. I wouldn't tell them the purpose of the study. I  
15 kind of make something up, you know, we just want to see  
16 how drivers drive in New York City and that typically  
17 satisfies them and then I'd measure all of these things.  
18 And then I would do a statistical analysis to find out  
19 whether drivers looked more often at one type of sign than  
20 another or looked for longer periods of time than another  
21 or looked at the brighter signs longer or the bigger signs  
22 longer so that would be kind of a research study that I  
23 would do on the road. But it's very expensive to do that  
24 and it's very time consuming to do that. There are other  
25 methods, but that's a typical.

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1 Q. Well, you don't have first-hand knowledge of that  
2 other than what you read in the article, right?

3 A. Correct.

4 Q. On page 18 you talk about in subheading B, the  
5 fuel signs that are elevated above grade -- I take that  
6 back. You say there was only one intersection where you  
7 observed where the fuel signs were at grade level?

8 A. That's my recollection, yes.

9 Q. If I'm reading the chart on appendix three  
10 correctly, it looks to me like you looked at 11 fuel signs  
11 on day one and ten fuel signs on day two.

12 A. Yes. That's what I wrote.

13 Q. Do you know how many fuel signs there are in  
14 Manhattan south of 97th Street?

15 A. I think I was given that information in a chart,  
16 but I don't remember the number.

17 Q. Did the chart include information about whether  
18 the sign was placed above or below grade level?

19 A. I don't remember.

20 Q. Who chose the fuel signs that you would view?

21 A. Well, in essence, Mr. Taggart identified the fuel  
22 signs to review, because I didn't know where they were  
23 located. And he did that based upon the criteria that I  
24 had provided, you know, that we wanted two-way streets,  
25 one-way streets, divided streets, cross streets, et cetera.

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1 Q. Did you ask them to provide or did you ask any  
2 questions about the siting of the fuel signs and  
3 determining which ones you wanted to go to?

4 A. What I remember asking him was, I had been given  
5 information in advance that fuel signs were either on  
6 building walls at grade level or on building walls higher  
7 up or inside garage entrances or on posts above grade at  
8 parking lots and gas stations. It might have been one or  
9 two other categories. And I said to him, I want to get a  
10 sampling of each of those types of locations.

11 Q. Did you ever ask to see all the fuel signs that  
12 were at grade level?

13 A. No.

14 Q. Did you ask to see all examples of fuel signs  
15 that could potentially be within a driver's line of sight?

16 A. No. I just, I just asked him to choose fuel  
17 signs that represented each category.

18 MS. NEUFELD: I'm quickly approaching the  
19 end.

20 Q. A quick question for you about appendix four.

21 A. Okay.

22 Q. What unit of measurement is represented in these  
23 -- values?

24 A. These are, I don't know the exact, I don't know  
25 the exact definition of them, but they are, they are

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1 readings from the exposure meter, the photometer that I  
2 used that translate directly into a value that is called  
3 ISO, I-S-O, which stands for international standards. I  
4 don't know what the O is. But it's meant for photography  
5 use and the ISO setting basically tells you how sensitive  
6 the camera or the lens or the film is to a brightness  
7 setting, how bright is the light that the camera can record  
8 basically.

9 Q. Have you ever had occasion to measure the  
10 brightness of, say, streetlights?

11 A. I have not, no.

12 Q. Is there any way to compare this ISO measurement  
13 to either foot candles or --

14 A. There's not. I think I said in the text, not in  
15 the appendix, that I didn't have the proper equipment which  
16 is call the photometer to measure luminance values and so  
17 this was a substitute and I hoped that I was careful to say  
18 that this measurement doesn't represent actual measured  
19 values of luminance, but is only, does a relative  
20 comparison of the brightness of the different signs.

21 Q. So just, for example, under urban panel, you say  
22 the brightness value is 14.5 to 15.5. What does that mean  
23 in laymen's terms?

24 A. Essentially, it doesn't mean anything except that  
25 14.5, if you look at the LCD video one, the 14.5 shows that

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1 the urban panel is brighter than the LCD video panel at its  
2 darkest setting and they were the equivalent brightness at  
3 the highest setting. But it doesn't enable you to convert  
4 that measurement into luminance or foot candles.

5 Q. So if I understand correctly, this chart doesn't  
6 actually tell you how bright something is, it only compares  
7 how bright something is as compared to something else  
8 that's also brightened?

9 A. That's correct.

10 Q. So if I just went through and rank these in order  
11 of number, it will just tell me which of the things you  
12 looked at, at the least bright and which of the things you  
13 looked at is the most bright?

14 A. That's right.

15 Q. Then I think your conclusion on page 20 and  
16 spilling over to the top of 21 is that of all the things  
17 you've looked at in your personal opinion, two things  
18 appear too bright to you.

19 A. Yes.

20 Q. Well, I'm correct, that that's just based upon  
21 your view as you are Mr. Wachtel looking at and not based  
22 on your professional experience?

23 A. I don't know how to divide that. I would say  
24 they're based on my looking at it and on the measurement  
25 with the light meter and when I look at something that

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1 relates to human factors and traffic, it's hard for me to  
2 separate out whether I'm looking at it as a lay man or I'm  
3 looking at it because of my professional experience in the  
4 field.

5 Q. Have there been other times when in your  
6 professional capacity you've analyzed the brightness of  
7 signs?

8 A. I have analyzed the brightness of quite a few  
9 traffic control devices, which include signs. I don't  
10 recall specific cases of analyzing the brightness of a  
11 sign, per se. But I have probably done that at some point  
12 over the years.

13 Q. When you analyzed the brightness of those traffic  
14 control devices, did you use the same method that you used  
15 here?

16 A. No. When I do my work as an expert witness or  
17 when I am participating in a research study, it is  
18 important to measure the brightness of things or the  
19 contrast of things with great precision. And so we use  
20 specialized equipment like a photometer, which I did not  
21 have access to for this visit.

22 Q. The new bus shelter at the south east corner of  
23 Park Avenue South and East 23rd Street --

24 A. Where are you reading from?

25 Q. Oh, I'm sorry. The top of page 21.

J. WACHTEL

## C E R T I F I C A T E

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STATE OF NEW YORK            )  
  : SS.:  
COUNTY OF NEW YORK        )

I, SHANASIA ILGNER, a Notary Public for and  
within the State of New York, do hereby certify:

That the witness whose examination is  
hereinbefore set forth was duly sworn and that such  
examination is a true record of the testimony given by that  
witness.

I further certify that I am not related to any  
of the parties to this action by blood or by marriage and  
that I am in no way interested in the outcome of this  
matter.

IN WITNESS WHEREOF, I have hereunto set my hand  
this 14<sup>th</sup> day of July, 2008.

  
SHANASIA ILGNER



**EXHIBIT TT**

ORIGINAL

1

1  
2 UNITED STATES DISTRICT COURT  
3 SOUTHERN DISTRICT OF NEW YORK  
4 Civil Action No. 06 Civ. 8193(PAC)(DF)

-----x  
5 CLEAR CHANNEL OUTDOOR, INC.,  
6 Plaintiff,

7 - against -  
8 THE CITY OF NEW YORK and PATRICIA J.  
9 LANCASTER, in her official capacity as  
10 Commissioner of the New York City  
11 Department of Buildings,  
12 Defendants.

-----x  
13 Civil Action No. 06 Civ. 8219(PAC)(DF)  
14 -----x  
15 ATLANTIC OUTDOOR ADVERTISING, INC., SCENIC  
16 OUTDOOR, INC., TROYSTAR CORPORATION, and  
17 WILLOW MEDIA, L.L.C.,

18 Plaintiffs,  
19 -against-  
20 CITY OF NEW YORK, PATRICIA J. LANCASTER,  
21 and EDWARD FORTIER,  
22 Defendants.

-----x  
23 January 22, 2008  
24 10:00 a.m.

25  
Deposition of JOSEPH PERELLO,  
pursuant to Notice, held at the offices of  
Davis Wright Tremaine LLP, 1633 Broadway,  
New York, New York, before Jineen Pavesi,  
a Registered Professional Reporter,  
Registered Merit Reporter, Certified  
Realtime Reporter and Notary Public of the  
State of New York.

1 PERELLO

2 advertising essentially, we only sought to  
3 use the advertising that we had the best  
4 way we knew how for the city.

5 Q. A little earlier in this report  
6 you took credit for increasing the  
7 advertising space to the city in extending  
8 the Viacom.

9 A. Yes.

10 Q. And didn't the CEMUSA deal,  
11 which you helped negotiate, provide for a  
12 somewhat broader number of shelters which  
13 would contain advertising?

14 A. That's a good question.

15 We sought to -- we did not  
16 seek to increase advertising panels for  
17 the sake of increasing advertising panels.

18 The DOT wanted more bus  
19 shelters, so we did not say build more bus  
20 stop shelters because it will be more  
21 advertising panels.

22 We sought to maximize  
23 advertising where advertising existed, so  
24 it is accurate to say that we increased  
25 advertising space on the existing

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PERELLO

advertising panels.

So with respect to the 17-1/2 percent, we were able to use space on existing advertising panels, this did not require Viacom to build new bus stop shelters.

However, the city needs more bus stop shelters, the DOT wants more bus stop shelters because they are useful, but that did not play in our evaluation; if DOT wanted to build less bus stop shelters, that's their business, not ours.

Q. So on whatever number of shelters, though, you did seek to increase the amount of advertising space the city could control?

A. Whatever -- only -- we did not seek to damage what worked.

So the bus stop shelter model worked, we did not seek to say give us more.

We only sought a number that was fair and that everyone could operate as they would.

PERELLO

Q. But to the extent that you increased the proportion of city-controlled advertising on those shelters, you took credit for it, did you not?

A. Yes.

Q. And you said, although you didn't do any studies on safety or aesthetics, you consulted with others on the law.

A. Yes.

Q. With whom else did you consult in determining what city-controlled advertising space might be appropriate.

A. The Law Department, but I want to clarify something; we did not have the authority to raise or lower advertising panels in the city, I want to make sure that's clear, our role was, for instance, very well explained in our role with the DOT, as an advisor, someone with unique knowledge in the industry.

So if we said we want more advertising panels in the city, we could

1 PERELLO

2 not magically increase the number of  
3 advertising panels in the city, so it  
4 really didn't play a large role in what we  
5 thought was acceptable or not.

6 Q. With whom at the Law Department  
7 did you consult on the question of what  
8 constraints there might be in terms of --  
9 what might be appropriate -- in terms of  
10 city-owned or city-controlled advertising  
11 space?

12 A. I can't remember.

13 I'm even just speculating that  
14 we consulted with folks, but I know that  
15 when we were considering, these are the  
16 things that we considered.

17 Q. Is it possible you consulted  
18 with no one?

19 A. I guess.

20 Q. In the second sentence of your  
21 quote you use the phrase "but without so  
22 much ambient advertising," do you see  
23 that?

24 A. Yes.

25 Q. What did you mean by "ambient

1 PERELLO

2 advertising"?

3 A. Ad panels everywhere, I guess,  
4 an abundant of advertising.

5 Q. You began that sentence with  
6 "we would prefer to get a good deal for  
7 our space."

8 What did you mean when you said  
9 "we would prefer to get a good deal for  
10 our space but without so much ambient  
11 advertising"?

12 A. I think there would be two ways  
13 to increase revenue, there would be two  
14 ways to help the bus stop shelter  
15 franchise run better; you could put up  
16 more ads or you could think a little bit  
17 harder and be more strategic and be  
18 smarter about it.

19 So I guess what I was saying  
20 there was we didn't think there was a need  
21 to increase the number of advertising  
22 panels in general and that was not our  
23 approach.

24 And I believe this was a  
25 response to the media's assumption that a

PERELLO

1  
2 chief marketing officer's job was to put  
3 up ads everywhere, we were responding to  
4 that.

5 Q. Did the phrase "ambient  
6 advertising" refer to advertising on  
7 private property and not city-owned  
8 property?

9 A. I am not sure.

10 Q. And then you finish the  
11 sentence, "or, for that matter, illegal  
12 advertising."

13 What were you referring to when  
14 you used the phrase "illegal advertising"?

15 A. I think I was referring to  
16 advertising that's illegal.

17 Q. Illegal in what respect?

18 A. I will give you an example of  
19 illegal advertising; I think stickers that  
20 go on the ground, on the sidewalk, or  
21 someone writes chalk on the sidewalk,  
22 currently there is no permit in place for  
23 that, that would be illegal advertising.

24 Q. Did the phrase "illegal  
25 advertising" apply, as you used it in that



**EXHIBIT UU**

ORIGINAL

1

1  
2 UNITED STATES DISTRICT COURT  
3 SOUTHERN DISTRICT OF NEW YORK  
4 Civil Action No. 06 Civ. 8193(PAC) (DF)

5 -----x  
6 CLEAR CHANNEL OUTDOOR, INC.,  
7 Plaintiff,

8 - against -  
9 THE CITY OF NEW YORK and PATRICIA J.  
10 LANCASTER, in her official capacity as  
11 Commissioner of the New York City  
12 Department of Buildings,  
13 Defendants.

14 -----x  
15 Civil Action No. 06 Civ. 8219(PAC) (DF)

16 -----x  
17 ATLANTIC OUTDOOR ADVERTISING, INC., SCENIC  
18 OUTDOOR, INC., TROYSTAR CORPORATION and  
19 WILLOW MEDIA, L.L.C,  
20 Plaintiffs,

21 -against-  
22 CITY OF NEW YORK, PATRICIA J. LANCASTER,  
23 and EDWARD FORTIER,  
24 Defendants.  
25 -----x

February 14, 2008  
9:45 a.m.

Deposition of STANLEY SHOR,  
pursuant to Notice, held at the offices of  
Davis Wright Tremaine LLP, 1633 Broadway,  
New York, New York, before Jineen Pavesi,  
a Registered Professional Reporter,  
Registered Merit Reporter, Certified  
Realtime Reporter and Notary Public of the  
State of New York.

1 SHOR

2 respond to certain when receiving  
3 violations on certain locations and not on  
4 others.

5 Q. How many PPTs currently have  
6 advertising on them?

7 A. I don't have a number for that.

8 Q. Do you have a general idea?

9 A. We have approximately 21,000  
10 pay phones in total; of that total, 58  
11 percent are at the curb and 42 percent are  
12 at the building line and this continuously  
13 changes over time.

14 There is a significant number  
15 of phones removed every year, there is  
16 also some phones that are new that come  
17 into the system.

18 Of that 58 percent, there is a  
19 percentage that have advertising on them,  
20 but it is not 100 percent.

21 As far as the actual number of  
22 ad panels, we do have records at the  
23 office for what the companies provide to  
24 us, the locations of the ad panels that  
25 they put up, but I don't have an actual

1 SHOR

2 number related to the phones, partially  
3 because there are difficulties in relating  
4 the advertising panels to the phones  
5 because there can be one phone, there can  
6 be two phones, there could be three phones  
7 related to the same advertising panels.

8 Q. When you said there are 21,000  
9 public PPTs, you could have --

10 A. You could even have four.

11 Q. You could have multiple PPTs in  
12 one enclosure, correct?

13 A. Yes.

14 Q. So there would be three  
15 advertising panels surrounding four PPTs?

16 A. Yes, usually, or there could be  
17 no advertising panels depending on what  
18 choices the company made and what the  
19 zoning is at the location.

20 Usually if there is four phones  
21 it is a commercial location and usually  
22 they would have three advertising panels,  
23 but not always.

24 Q. You said that the breakdown was  
25 58 percent at the curb, 42 percent at the

SHOR

1  
2 considered approving anything that was  
3 going to create a distraction, even if it  
4 was going to bring us twice the amount of  
5 money.

6 Q. In deciding whether the  
7 advertising would create a distraction,  
8 how would you make that determination?

9 A. I made the determination based  
10 on -- as you can see in my letter of  
11 approval, saying that the illumination  
12 would be no brighter than the rest of the  
13 panel.

14 Basically it was to not create  
15 a significant change in the look of the  
16 pay phone for this type of advertising.

17 Q. In deciding whether an  
18 advertisement would constitute a  
19 distraction, did you give weight to what  
20 sort of advertising was on bus shelters,  
21 for example?

22 A. No.

23 Q. Did you give weight to what  
24 sort of advertising was on MTA signs, for  
25 example?

1 SHOR

2 Q. What was the answer that you  
3 received?

4 A. I never received an answer on  
5 this.

6 I don't know if the  
7 commissioner took this any further.

8 Q. Do you know how many such  
9 advertisements the MTA has over transit  
10 facilities?

11 A. No.

12 MS. SCHNEIER: I will just mark  
13 one more document, Exhibit 113, and then  
14 if I can take a five-minute break to  
15 confer, I think I will wrap it up.

16 This is a document Bates  
17 stamped NYC 10702 through 10710.

18 (Clear Channel Exhibit 113,  
19 Bates stamped NYC 10702 through 10710, was  
20 marked for identification, as of this  
21 date.)

22 (Witness perusing document.)

23 Q. Earlier in the deposition,  
24 Mr. Shor, I believe you testified that  
25 DOITT does not track whether any of the

# EXHIBIT VV



**DEPARTMENT OF INFORMATION TECHNOLOGY AND  
TELECOMMUNICATIONS**

75 Park Place, 9<sup>th</sup> Floor  
New York, NY 10007  
(212) 788-6550  
Fax (212) 788-8938

**GINO P. MENCHINI**  
*Commissioner*  
*Chief Information Officer*

**STANLEY SHOR**  
*Assistant Commissioner*  
*PPT Franchises*

January 10, 2005

Paul G. Whitby, Esq.  
General Counsel  
Van Wagner Communications, LLC  
800 Third Avenue  
New York, NY 10022-7604

Re: Use of LED Displays

Dear Mr. Whitby:

Commissioner Menchini has reviewed your request for authorization to maintain 49 light emitting diode (LED) displays on public pay telephone kiosks. Please be advised that your request is rejected. Therefore, these installations must be removed forthwith.

Please be advised that failure to remove these displays within thirty (30) days will result in additional enforcement proceedings. Your cooperation will be appreciated.

Sincerely,

A handwritten signature in black ink, appearing to read "Stanley Shor", is written over a horizontal line.

Stanley Shor

C: Commissioner Gino Menchini  
Deputy Commissioner Agostino Cangemi



Government Information and Services for NYC



**EXHIBIT WW**

UNITED STATES DISTRICT COURT  
SOUTHERN DISTRICT OF NEW YORK

ORIGINAL

-----x  
METRO FUEL, LLC,

Plaintiff,

Case No.

07-CV-8244

- against -

CITY OF NEW YORK,

Defendant.  
-----x

June 10, 2008

12:30 p.m.

75 Rockefeller Plaza

New York, New York 10019

DEPOSITION of KERRY GOULD-SCHMIT,  
testifying on behalf of THE CITY OF NEW YORK,  
the Defendant in the above entitled matter,  
taken pursuant to Consent, before a Notary  
Public of the State of New York.

RAYVID REPORTING SERVICE, INC.

(212) 599-3642

**KERRY GOULD-SCHMIT**

**A P P E A R A N C E S :**

**EMERY CELLI BRINCKERHOFF & ABADY, LLP**

**Attorneys for Plaintiff**

**75 Rockefeller Plaza**

**New York, New York 10019**

**BY: ERIC HECKER, ESQ.**

**MICHAEL A. CARDOZO, ESQ.**

**Corporation Counsel**

**New York City Law Department**

**Attorneys for Defendants and Witness**

**100 Church Street**

**New York, New York 10007-2601**

**BY: SHERYL R. NEUFELD, ESQ.**

**Assistant Corporation Counsel**

**- and -**

**BY: CHRISTINA HOGGAN, ESQ.**

**Assistant Corporation Counsel**

1 KERRY GOULD-SCHMIT

2 disagree.

3 The amount of money that Cemusa  
4 thinks it's going to make on this contract is way,  
5 way more than it's going to cost them to build out  
6 the newsstands and maintain them for twenty years.

7 Would you agree with that?

8 MS. NEUFELD: Objection.

9 A Yes.

10 Q The difference between being able to  
11 place advertising signs on the newsstands and not  
12 being able to place advertising signs on the  
13 newsstands is not the difference between this deal  
14 being profitable for Cemusa or not profitable for  
15 Cemusa, right?

16 MS. NEUFELD: Objection.

17 A Could you just repeat that?

18 MR. HECKER: Read it back.

19 (The question requested was read  
20 back by the reporter.)

21 A I agree, the deal would be  
22 profitable for Cemusa, less profitable, but still  
23 profitable.

24 Q I know we don't have a crystal ball,  
25 but based on your practical experience, would this

1 KERRY GOULD-SCHMIT

2 process generally, and would this bidder in  
3 specific -- isn't it a fair presumption that if  
4 the City had decided to require the proposers to  
5 build out and maintain all the newsstands, but not  
6 allow them to put advertising on, then, A, the  
7 bidders still would have bid and still would have  
8 been willing to play ball; but B, would have  
9 simply offered the City less compensation?

10 Isn't that fair to assume?

11 MS. NEUFELD: Objection.

12 A I think it's fair to assume, with a  
13 certain caveat.

14 The newsstands are a very difficult  
15 replacement for any proposer. There are  
16 individuals who operate them. This is not -- it's  
17 not a fun thing for them to do.

18 I mean, this is extremely  
19 complicated. It's become very expensive with the  
20 electrical hookups. I mean, I think you needed to  
21 incentivize it somehow.

22 I agree with you, I think it would  
23 still be profitable for them, but I think some --  
24 it's a huge headache for them. So, I think --

25 Q It's a huge headache for them

1 KERRY GOULD-SCHMIT

2 regardless of whether they are putting advertising  
3 signs on them?

4 A The advertising incentivizes it for  
5 them. We wanted a relationship between them and  
6 the newsstand operators. This -- I've been  
7 involved with the newsstand operators a long time.

8 It makes it a bit easier for the  
9 company to swallow. It also, I hope, makes the  
10 relationship better. It makes the company more  
11 attentive to the newsstand operator.

12 I think there are all these outside  
13 goods that come from the fact that there is  
14 advertising on that newsstand.

15 Q I want to focus on the aspect that  
16 you focused on in your Declaration, which is the  
17 money.

18 My reading of Footnote 3 is that  
19 you're suggesting that the City needed the carrot  
20 of newsstand advertising revenue to induce the  
21 prospective bidders to be willing to build  
22 newsstands. That's what you're suggesting in this  
23 footnote, right?

24 A Yes; and maybe not -- yes, I am  
25 suggesting that. I think we needed the money as a

1 KERRY GOULD-SCHMIT

2 carrot.

3 Q I'm not in any way suggesting this  
4 is perjury. I'm just asking you to reconsider in  
5 more detail whether this is the best way of  
6 reflecting your view, and I'm asking you to  
7 consider whether it isn't really more accurate to  
8 say that you needed some carrot, that's for sure,  
9 but that the overall carrot of allowing the  
10 bidders to put advertising on bus shelters, which  
11 is far more lucrative than advertising on the much  
12 smaller number of newsstands would have been  
13 enough of a carrot to induce people to build out  
14 the newsstands, albeit, with less money promised  
15 to the City. Isn't that fair?

16 MS. NEUFELD: Objection.

17 A I think we needed the carrot, and  
18 the only reason I say this to you, when we have a  
19 newsstand litigation, I will tell you we  
20 anecdotally heard a lot of people saying sever  
21 them off.

22 Q My firm represented the Plaintiffs  
23 in that case, so I'm familiar with that.

24 A I'm talking about the anecdotal  
25 things we heard from the business community, I'll

1 KERRY GOULD-SCHMIT

2 say; and their point was, we'd rather do it  
3 without them, we would rather do the bus stop  
4 shelters.

5 If we are going to take on the  
6 headache of these newsstands, they would have to  
7 have advertising, because there is no way they  
8 wanted to do it just to do it, and we did hear  
9 that, just in conversation with people.

10 Q From prospective bidders or from  
11 newsstand operators?

12 A I just know it was sort of talked  
13 about, like at the City Council hearings and  
14 things like that, about they knew the litigation  
15 was pending. It could have been an issue of  
16 people didn't want to get involved in -- I don't  
17 know what.

18 I just know that there are 296  
19 stands and about 260 of them are below 96th Street  
20 in Manhattan. Extremely difficult construction.  
21 It's a lot of pain to deal with the newsstands  
22 just because you're constantly inundated with  
23 requests from people and I think we needed to have  
24 advertising to act as an incentive to move  
25 forward.



1 KERRY GOULD-SCHMIT

2 Q Your belief is that if the City had  
3 said you can have two panels on each of 3,300 bus  
4 shelters, but you can't have any panels on  
5 newsstands and we expect your revenue offers to  
6 reflect that, your belief is that the bidders  
7 would not have been willing to bid on the street  
8 furniture at all?

9 If that's what you're saying, so be  
10 it.

11 A I really have no idea what they  
12 would do. I really don't. I don't know their  
13 business models or what they are thinking. I  
14 don't know.

15 I can't answer that question. I  
16 know what we felt, and I still believe this, we  
17 needed to incentivize the newsstands somehow.

18 Q And you didn't think that 6,600 ad  
19 panels on 3,300 shelters was enough?

20 A I know -- like I said, I have no  
21 idea. I'm not a bidder.

22 Q Let me ask you this question.

23 Did the City ever consider, to your  
24 knowledge, whether it would have been such an  
25 incentive to get these newsstands built, to limit